

NOT FOR CITATIONUNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KIMBERLY A. GLASSMAN,

Plaintiff,

No. C 02-5154 PJH

v.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

UNITED STATES of AMERICA,

Defendant.

This matter was tried before the court for a period of four days commencing May 31, 2005. Plaintiff Kimberly Glassman has brought an action against the United States pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346(b), for damages incurred as the result of a December 2000 automobile accident in which a United States Postal Service employee, while driving a postal service vehicle, rear-ended the van she was driving. Glassman was represented by her counsel Julia Parranto, and the United States (hereafter the “government”) was represented by its counsel, Claire Cormier and Julie Arbuckle.

FINDINGS OF FACT

The court has attempted to “avoid commingling findings of fact with conclusions of law.” Lieber v. Macy’s West, Inc., 80 F. Supp. 2d 1065, 1066 n.1 (N.D. Cal. 1999). To the extent this effort fails, “any conclusions that are inadvertently labeled as findings (or vice versa) shall be considered ‘in [their] true light, regardless of the label that the . . . court may have placed on [them].’” Id., quoting Tri-Tron International v. Velto, 525 F.2d 432, 435-36 (9th Cir. 1975).

A. Kimberly Glassman

Kimberly Glassman is a 40-year-old woman who previously worked as a truck driver. She claims to have developed post-traumatic stress disorder (“PTSD”) as a result of the

December 2000 accident and that the disorder is so disabling that she will be unable to work in any capacity for the rest of her life.

1. Personal History

Glassman grew up in Visalia, California, where she had a difficult childhood.¹ Glassman was born with a cleft palate, which took nine surgeries throughout her childhood to correct. Glassman's family medical history includes a genetically-transmitted disorder known as Charcot-Marie-Tooth disease, which causes neurological degeneration. Her father was and a brother is afflicted with the disorder. Glassman does not herself suffer from the disorder, but nonetheless worries about contracting it. Glassman's parents also fought frequently and separated when she was five. About two or three years later, her father took her brother away and she did not see him again until she was twelve. Meanwhile, her mother remarried, and her stepfather sexually abused her and another brother for several years when she was a teenager. See, e.g., Def. Exh. A-69 at 7-8 (expert report of psychiatrist Dr. Mark Levy, summarizing Glassman childhood trauma).

Glassman was also involved in a number of traumatic vehicle accidents in her youth. As a child, she was in the car with her parents when they were hit by a drunk driver, and at another time she was in the car with her mother when it was struck by a driver who ran a stop sign. Her mother was seriously injured. Later at about age twenty one she was in an accident while riding her bicycle and suffered a vertebral compression fracture. See, e.g., Def. Exh. A-69 at 8. Several years later while driving her mother's car, she drove into an intersection when her vision was obstructed to see if any cars were coming and she was hit again. Also while Glassman was in her early 20's, her grandmother and father were in an accident. Her grandmother died from her injuries within a few days and her father was injured badly and never completely recovered from his injuries before his death two years later. Id. at 9.

After Glassman completed the ninth grade, she left school and took the California High

¹ "Glassman" is Kimberly Glassman's married name, which she adopted upon her marriage to her second husband, Stephen Glassman, in 1999. For convenience, the court will refer to her as "Glassman" or "Kimberly Glassman" throughout this order.

1 School Proficiency Examination, which she passed. She left school in part because she was
2 teased by other students because of her cleft palate. Glassman then attended the College of
3 the Sequoias for about one and a half years, and then left school altogether.

4 Glassman worked a number of odd jobs, including in the food industry, in retail
5 services, and in janitorial services. Meanwhile, she learned how to drive a commercial truck,
6 and obtained her commercial license at the age of 18. She began her trucking career hauling
7 produce from Oregon to South San Francisco and Shasta for two and a half years. When she
8 was 25, she began hauling for the company Vine Hill Transport, for whom she worked for eight
9 years.

10 Glassman married her first husband, Steve Berant in 1987 or 1988, and they had two
11 children.² They purchased a house together in Felton, California when she was 23. Berant
12 and Glassman separated some time in the mid-1990s, but Glassman kept the house.

13 After Glassman separated from Berant, she began working full-time for Vine Hill. In
14 1997, she bought her own truck, and in 1998, she became self-employed. While she was
15 working for Vine Hill, she earned 25% of the gross value of her load. As a self-employed
16 trucker, she paid 20% of the gross load value to lease a trailer, paid a 5% broker fee to the
17 companies for whom she hauled, and retained 75% of the gross income. However, as a self-
18 employed trucker, she also had to pay for the truck out of her own profits, whereas when she
19 worked for Vine Hill, they provided a truck. In 1998, Glassman earned \$76,462.05. Pl. Exh.
20 108 at 2 (1998 IRS 1099-MISC form). She was hoping to buy her own trailer, at which point
21 she would only need to pay the 5% broker fee and would get to keep 95% of the gross.

22 2. Adult Medical History

23 Glassman has an extensive medical history. In September 1987, before her marriage
24 to Berant, she was diagnosed with “acute anxiety and depression” after reporting that she was
25

26 ² Glassman failed to note this first marriage when speaking with her own retained
27 psychologist. See, e.g., Pl. Exh. 96 (expert report of psychologist Dr. Albert Kastl, calling Berant
28 a “boyfriend”; Kastl confirmed on the stand that Glassman did not identify Berant as her ex-
husband in their interview). On direct examination, Glassman failed to report this marriage as
well, and only admitted to it when questioned on cross.

1 “upset all the time.” Def. Exh. A-1. She was also diagnosed with chronic pelvic pain the next
2 month, and in December 1987, she was involved in the bicycle accident referred to previously,
3 in which she fractured a vertebra in her lower back. Def. Exh. A-2. Glassman also suffered a
4 miscarriage in 1989. Pl. Exh. 81 (medical records from 1987 and 1989).

5 The records resume again in 1995, when she was diagnosed with an ovarian cyst.³
6 Def. Exh. A-4. At that time, she also reported that she experienced “chronic back pain” and
7 numbness in the legs. Id. The chronic back pain appears to have been persistent. See Def.
8 Exh. A-5, A-6 (lower back pain approximately once a month throughout 1997); Def. Exh. A-8
9 (pain in hips in 1999).

10 In 1998, Glassman was in another car accident described above in which she was
11 broadsided, after which she reported pain in her neck and on her left side. Def. Exh. A-7.

12 3. 1999-2000

13 In 1999, Glassman married her second husband, Stephen Glassman, and in
14 September of that year, gave birth to her third child. Glassman worked until her son's birth,
15 and returned to work three months later, in December 1999. Also in September, Stephen
16 Glassman began driving and hauling for Glassman's company (which was renamed from
17 “Kimberly and Sons” to “Kimberly and Stephen Glassman”).

18 Starting around 2000, Kimberly Glassman's life became very stressful. The
19 Glassmans were having financial problems, see, e.g., Def. Exh. A60, 61 (unpaid bills to
20 PG&E for \$446.85 and GTE Wireless for \$773.01), Def. Exh. A57 (Glassman's application
21 for MediCal), and Kimberly and Stephen were fighting. Glassman described Stephen's
22 behavior as “emotional abuse” and both admitted that they threw things at each other during
23 these fights. At one point during this time period, Stephen was arrested for domestic
24 violence, though the charges were later dropped. Kimberly and Stephen also briefly
25 separated around this time, but later reconciled.

27 ³ It appears some of Glassman's medical records are missing. For instance, there
28 are no records of the births of her first two children, in 1988 and 1991, both of whom were
delivered by cesarean section.

1 In the middle of 2000, Glassman became pregnant with her fourth child. While the
2 medical record for this pregnancy is thin, the pregnancy was apparently difficult, because
3 Glassman began receiving repeated prescriptions for painkillers such as Vicodin
4 (hydrocodone) and Tylenol with codeine, starting around September 2000. Def. Exh. A-9
5 (record of Glassman's Rite-Aid prescriptions).

6 As her pregnancy progressed, Glassman was working only part-time. In the MediCal
7 form she filled out in July 2000, she indicated that she expected to work only 60-80 hours a
8 month. Def. Exh. A-57 at 9 (MediCal questionnaire).

9 In November 2000, Stephen stopped driving for their company, because he had gotten
10 into a dispute with Viviano Trucking, the company that subcontracted work to them.

11 4. December 2000 Accident

12 On December 18, 2000, Glassman was driving to the post office in a Chevrolet
13 minivan, with her one-year-old son. She was approximately five months pregnant at the time.
14 Glassman was wearing a seat belt and her son was strapped into a car seat. As she was
15 merging from Route 17 onto Route 1 in Santa Cruz, traffic ahead stopped suddenly, and
16 Glassman braked. A U.S. Postal Service truck behind Glassman was unable to slow down in
17 time, and rear-ended Glassman's van. The truck was driven by Eduardo Sanchez, whom the
18 government concedes was acting within the scope of his employment at the time of the
19 accident.⁴

20 Glassman's van sustained moderate damage to the rear window, the rear bumper, the
21 tailgate door and the right tail lamp. The postal truck suffered relatively minor scrapes to its
22 fender, but no other damage. Glassman did not hit any cars in front of her, and her air bags
23 did not inflate. See Pl. Exh. 1 (accident report); Pl. Exhs. 2-11; Def. Exh. A-11 (pictures of
24 accident).

25 Glassman testified that her hat flew off her head and she may have hit her left arm. At
26 the scene, she complained of neck and upper back pain. She reported no other injuries. See

27
28 ⁴ Sanchez did not testify at trial because he has been deployed to Iraq.

1 Pl. Exh. 79 (EMT report). Glassman's son was uninjured, but was frightened and crying.
2 Glassman testified that she was terrified that her son and unborn child could have been injured
3 in the accident.

4 Glassman was taken to the hospital. The doctors took x-rays of her neck and found no
5 signs of injury. However, because of Glassman's pregnancy, the doctors would not x-ray her
6 back or conduct any other invasive tests. She was prescribed Vicodin and sent home the
7 same day.

8 Glassman testified that after the accident, the pain, especially in her neck, back, and
9 shoulders, was excruciating. "It felt like someone had taken a board and beaten me."

10 Glassman also described tingling throughout her left side, and the sensation of a "cold steel
11 rod" going up her back.

12 Both plaintiff's and defendant's experts at trial agreed that Glassman had suffered only
13 soft tissue injury as a result of the December 2000 accident. Glassman testified that the pain
14 rendered her unable to work, and that she became terrified to drive. Glassman also testified
15 generally that she was rendered at least partially unable to perform household chores.

16 About ten days after the accident, Glassman went to the Santa Cruz County Health
17 Services Agency, reporting severe back pain. The doctor recommended that she not drive for
18 two weeks. Def. Exh. A-13 (12/29/00 visit). The pain continued through January, but
19 appeared to be improving at that time. See, e.g., Def. Exh. A-14 (1/16/01 visit). Glassman
20 confirmed this in her testimony. Glassman also visited a chiropractor 22 times from January
21 3, 2001 to May 23, 2001. Pl. Exh. 85. The only additional doctors visits reflected by the
22 records are follow-up appointments. See Pl. Exh. 113 (medical bills).

23 5. April 2001 Accident

24 Despite her reported fear of driving after the December 2000 accident, Glassman
25 nonetheless continued to drive. Glassman explained this behavior at trial as her attempt to
26 conquer her fear so that she could continue working as a truck driver once she was fully
27 recovered from her injuries.

28 On April 17, 2001, Glassman was driving down a private road near her home to run

errands when her neighbor backed into her car. She was nine months pregnant at this time. Glassman went to the emergency room, reporting that she was reinjured and that the accident had exacerbated the pain in her neck and back. Her unborn child was uninjured. See also Def. Exh. A-15 (4/17/01 ER report); A-71 at 2 (Sutro expert report, Glassman reporting that April 2001 accident caused recurrence of injury). At trial, Glassman claimed that this accident was very minor, not traumatic in any way, and that she suffered no lasting physical or psychological effects from it.

6. April 2001-November 2002

On April 26, 2001, Glassman gave birth to her fourth child.

Starting around this time period, Glassman's medical providers began noting her possible addiction to Vicodin. See Def. Exh. A-16 (note from obstetrician on 5/3/01 stating, "Patient is having many stressful events – moving with four children, loss of income, possible addiction to Vicodin," and recommending referral to social worker). See also Def. Exh. A-23 (2/22/02 report, Glassman requesting "some kind of pain relief," doctor noting "try to minimize Vicodin"). During this time period after the April 17, 2001 accident, Glassman continued to complain of pain which she attributed solely to the December 2000 accident. Def. Exhs. A-17, A-20, A-22, A-23, A-24, A-25, A-27, A-28, A-29, A-30; Pl. Exhs. 80, 82, 85, 87, 90 (from 5/01 to 12/02). Notably, Glassman's treating physician, Dr. Randall Anselmo, stated on August 26, 2002 both that "I am not going to treat her with narcotic painkillers," and that "I have encouraged her to get back to work, driving trucks, although I doubt that will occur since she has an open lawsuit and a vested interest in remaining ill." Def. Exh. A-28.

Throughout this time, the Glassmans continued to have financial, marital, and personal problems. Glassman stopped making payments on her mortgage commencing around January 2001. At trial, she claimed that she had simply forgotten to make the payments, due to the stress of the December 2000 accident. Sometime in 2001, Glassman filed for bankruptcy. Pl. Exh. 76 (filings before bankruptcy court).⁵

⁵ At trial, Glassman denied having filed for bankruptcy, claiming only that she had sold her house and truck to repay her debts.

1 Kimberly and Stephen separated again, and Stephen moved out of the house in Felton
2 around May 2002 and moved to Santa Rosa. Around August 2002, Kimberly and the children
3 moved in with her friend David Peterson. Peterson testified that at this time, he observed that
4 Glassman was drinking wine regularly at his home. He also specifically recalled lending his
5 car to Glassman on several occasions but acknowledged that she had access to his keys
6 during the daytime when he was not at home. Stephen Glassman testified that Kimberly
7 would drive to Santa Rosa regularly to drop off the children for visits. Glassman, though,
8 testified that she remained very frightened of driving throughout this time and therefore drove
9 as little as possible.

10 7. November 2002 Accident

11 On November 18, 2002, Glassman borrowed Peterson's car to drive herself and her
12 two youngest children to visit her grandmother in Visalia for Thanksgiving. Glassman drank
13 two or three glasses of wine that afternoon over lunch before departing.

14 While driving Peterson's car that day Glassman was involved in a major accident.
15 According to her, she was rear-ended by a car, which bounced her car into a third car. She
16 claims to have passed out just before the impact. See Exh. A-41 (12/4/02 ER report). The
17 police report, however, reports the responding officer's conclusion that Glassman was driving
18 approximately 35-45 mph when she hit a pickup truck ahead of her. That driver then hit a third
19 car, which left the scene. Def. Exh. A-38. See also Def. Exh. A-40 (ER report, estimating
20 impact at 50-55 mph). The front of Glassman's car was destroyed, the airbags deployed, and
21 the car burst into flames. The pickup truck she hit was completely destroyed. Def. Exh. A-38
22 (police report); A-39 (pictures of cars after accident). The passenger in the pickup truck was
23 airlifted to a hospital for treatment. Def. Exh. A-38.

24 Glassman claims that she was not physically injured in this accident, and that because
25 she had passed out at the time of impact, she was unaware of its severity and thus suffered no
26 psychological trauma from it either. She obviously regained consciousness at the scene, as
27 reflected by her statements to law enforcement and medical personnel, and was able to
28 observe the results of the accident. At the scene, Glassman complained of chest pain and

1 was taken to the hospital where she was kept overnight for observation. Def. Exh. A-38 at 3
2 (11/02 police report); Def. Exh. A-40 (11/02 ER report).

3 Glassman's blood alcohol level was determined to be .15%, and she was arrested for
4 felony driving under the influence, a charge to which she subsequently pleaded nolo
5 contendere. Def. Exhs. A-43, A-44. Glassman spent 11 days in jail (of a 60-day sentence),
6 and her driver's license was suspended for one year. Additionally, she was ordered to
7 perform 44 days of community service, which she fulfilled by performing receptionist duties for
8 the nonprofit organization Fair Housing of Marin.

9 Glassman admitted that she was at fault in the accident, but also claimed that the
10 accident was caused because she had been over prescribed pain medication by her doctors,
11 and that she had mistakenly taken a double dose that afternoon. Glassman continues to
12 maintain that she did not believe that she had drunk very much alcohol earlier that day.
13 Glassman also claims that the only reason why she pleaded nolo contendere to the DUI
14 charge was because she was unconscious at the time of the accident and did not know what
15 had actually happened that day.

16 The driver of the pickup truck later sued both Glassman and Peterson over the
17 accident. Glassman claimed little knowledge of the lawsuit, and stated that it was her
18 impression that she had not been named in the suit and that it was primarily a dispute
19 between insurers. The case was ultimately settled before trial.

20 Glassman testified that after the accident, she quit drinking entirely. However,
21 Peterson stated in his deposition in the lawsuit filed against him that Glassman drank about as
22 much after the accident as she did before. Stephen Glassman also called Kimberly's doctors
23 in December 2002 (after they reconciled) to report that "all she does is drink." Def. Exh. A-42
24 (note in Glassman medical file dated 12/11/02).

25 A few weeks later, on December 4, 2002, Glassman returned to her regular physician,
26 Dr. Anselmo, complaining of chest pain and requesting narcotics. Anselmo informed her that
27 he would not prescribe her any additional narcotic drugs, and noted in her file that "I do feel
28 that this patient has drug-seeking behavior." Pl. Exh. 87.

1 8. Present Day

2 Glassman now lives in a trailer park in Marin County with her two younger sons. While
3 she and Stephen did reconcile shortly after the November 2002 accident, she has since
4 separated from him again, and her two older sons have moved in with their father, Steve
5 Berant. The older children visit her once or twice a month.

6 As part of the bankruptcy proceedings, Glassman was forced to sell her truck and
7 house sometime in 2003. She made no money from their sale, despite the fact that she had
8 over \$100,000 in equity.

9 Glassman does not hold a valid driver's license at this time. Furthermore, she has not
10 yet completed the First Offender DUI Education Program she is required to complete as a
11 condition of her probation. Thus, she remains ineligible to obtain a driver's license.

12 Glassman has not attempted to look for another paying job since the 2000 accident.
13 Glassman believes that her medical condition prevents her from undertaking any gainful
14 employment. Nonetheless, Glassman repeatedly stated that she has a strong desire to work
15 again.

16 B. Medical Evidence

17 Glassman reports that she continues to feel physical pain from the 2000 accident.
18 Glassman also reports that she feels extremely anxious all the time, and that she cannot focus
19 or concentrate. All the medical doctors that have seen her confirm that she is extremely
20 anxious and emotionally volatile, and that there is no physical cause for her pain Pl. Exh. 78
21 (expert report of Dr. Miller, for plaintiff); Def. Exh. A-71 (expert report of Dr. Sutro, for
22 defendant); Def. Exh. A-69 (expert report of Dr. Levy, for defendant).

23 Defendants concede that Glassman suffered soft tissue injury from the December 2000
24 accident, and that she suffered stress and anxiety as a result of being in an accident with a
25 one-year-old in the car and while five months pregnant. Glassman, though, contends that the
26 accident caused not only soft tissue injury but triggered her PTSD, which will render her
27 completely unable to work ever again, in any capacity. Thus, the contested issues are whether
28 Glassman suffers from PTSD, and if so, to what extent she is disabled by PTSD.

1 1. Glassman's Experts

2 a. Dr. Miller

3 At trial, neurologist Dr. Jack E. Miller testified on behalf of Glassman. Pl. Exhs. A-77,
4 78 (CV and expert report). Miller conceded that he is not a psychiatrist or otherwise trained in
5 psychiatry, but claimed expertise in psychiatric issues to the extent they were implicated in
6 neurological diagnoses.

7 Miller testified that he has diagnosed Glassman with PTSD. Miller's diagnosis is
8 based on the following factors: the trauma suffered by Glassman from being in the December
9 2000 accident while pregnant and with another child in the backseat; Glassman's continued
10 sensitivity and emotionalism when recalling the event five years later; Glassman's overall high
11 levels of anxiety reflected by her rapid pulse and sweaty palms; her reports that she continues
12 to think about that particular accident; and her continued reports of physical pain that cannot
13 be substantiated by medical examinations or diagnostic tests. Miller testified that PTSD is
14 particularly probable when a mother perceives a threat to her child. While Miller agreed that
15 psychological or psychiatric therapy might have been effective earlier, at this point, Miller
16 opined that Glassman's PTSD was now chronic and while therapy might ameliorate the
17 symptoms, it would not cure the disorder itself. In order for PTSD to be cured, it must be
18 treated immediately following its onset.

19 Miller discounted defendants' experts' conclusions that Glassman had a somatization
20 disorder (characterized by patients translating emotional stress into physical complaints),
21 because Glassman did not show a prior history of anxiety or an extensive medical history for
22 perceived ailments that had proven to be groundless. Miller also discounted defendants'
23 experts' conclusions that Glassman had abused alcohol or narcotic drugs, claiming that they
24 had selectively chosen to highlight only the negative aspects of Glassman's medical file.
25 Miller stated that he believed Glassman's November 2002 accident was a lapse in judgment,
26 but not a sign of alcohol-induced behavior.

27 Miller diagnoses PTSD in patients approximately once or twice a month.
28

1 b. Dr. Kastl

2 Dr. Albert Kastl, a psychologist, also testified for Glassman. Pl. Exhs. 95, 96 (CV and
3 expert report). Kastl reported that he administered the Beck test and the Penn Inventory test
4 on Glassman, and that she scored very high on both for PTSD, which was tested
5 independently from anxiety disorders. Kastl discounted objections raised by other
6 psychologists that the Beck and Penn Inventory tests are susceptible to manipulation by test
7 takers who stand to gain from a positive diagnosis, as merely one side of the debate. He was
8 firm in his belief that his testing and conclusions were accurate.

9 Kastl confirmed the diagnosis of PTSD that had previously been reported to him by
10 other experts. His diagnosis was based on Glassman's self-reported high levels of anxiety,
11 self-reported flashbacks to the December 2000 accident, and self-reported ongoing efforts to
12 avoid the scene of the accident. He conceded that he did not take a detailed personal history
13 from Glassman. Kastl testified that the subsequent car accidents, in particular, the November
14 2002 accident, served only to deepen the PTSD caused by the December 2000 accident,
15 because of Glassman's guilty feelings.

16 Kastl discounted defendant's experts' conclusions that Glassman has a personality
17 disorder that encourages her to perceive herself as a victim of circumstance, claiming that
18 personality disorders tend to be lifelong, and the medical record and Glassman's personal
19 history did not support any previous diagnoses of personality disorder. Kastl opined that
20 Glassman's successful previous work history was contrary to a diagnosis of personality
21 disorder as well.

22 2. Defendant's Experts

23 a. Dr. Sutro

24 Dr. Michael Sutro, an orthopedic spine specialist, testified on behalf of the defendant.
25 Def. Exhs. A-65, A-71 (CV and expert report). After examining Glassman, he concluded that
26 the range of motion in her neck and shoulders was normal, as was her grip strength. Based
27 on his review of the records, Sutro concluded that Glassman had suffered soft tissue injury
28 from the December 2000 accident, which should have resolved within three to four months, but

1 within six months at the latest, if Glassman performed the necessary stretching exercises and
2 other physical therapy. Sutro noted in his report that Glassman stated that she was not
3 currently doing any stretching exercises, despite her reports of physical pain. Sutro also
4 stated that his estimate did not take into account the possibility of re-injury in Glassman's
5 subsequent car accidents.

6 Sutro concluded that there was no physical reason why Glassman could not return to
7 work, but offered no opinion on Glassman's psychological state.

8 b. Dr. Rosenberg

9 Saul Rosenberg, PhD, a forensic psychologist, also testified on behalf of defendant.
10 Def. Exh. A-64, A-70 (CV and expert report). Rosenberg administered the PAI test, which he
11 testified was more reliable than the Beck and Penn Inventory tests because the PAI test is
12 controlled for self-reporting bias. Under the PAI test, Glassman appeared not to have PTSD
13 but rather showed symptoms consistent with a somatization disorder, where people with a
14 lack of psychological insight manifest their emotional problems through physical complaints.

15 Rosenberg also opined that Glassman showed signs of a histrionic personality
16 disorder, which manifests itself in over-emotionality and a tendency to view herself as a victim
17 of circumstance rather than take responsibility for her own actions. Rosenberg hypothesized
18 that Glassman was choosing to focus on the December 2000 accident as the cause of all her
19 current problems because she was not responsible for that accident, as opposed to the other
20 difficulties in her life for which she was at least partially responsible. In support of this
21 hypothesis, Rosenberg noted Glassman's pervasive pattern of shifting blame onto other
22 parties for events for which she was either partly or wholly responsible, including the breakup
23 of her marriage, her financial difficulties, and the DUI accident in 2002.

24 Rosenberg also noted that despite Glassman's tendency to exaggerate her
25 shortcomings and minimize her strengths, her level of psychological functioning in the testing
26 was in fact quite high. He opined that she had no mental impairments that would prevent her
27 from returning to work.

28 Rosenberg agreed that Glassman showed signs of an anxiety disorder, but opined that

1 the anxiety disorder appeared to predate the December 2000 accident, noting particularly
2 repeated references in Glassman's medical history to her rapid pulse rate and other
3 indicators of anxiety in her medical record.

4 c. Dr. Levy

5 Finally, Dr. Mark Levy, a forensic psychiatrist, testified for the defendants. Def. Exhs A-
6 63, A-69 (CV and expert report). Levy confirmed Rosenberg's diagnosis of somatization
7 disorder, and further discounted Glassman's experts' diagnosis of PTSD. In supporting the
8 diagnosis of somatization, Levy noted in particular Glassman's long history of reporting vague
9 physical complaints at times of emotional stress, as seen in her medical records, especially
10 her continued complaints about "decreased sensation" in her body. Levy explained that it was
11 not uncommon for people with extensive contact with the medical community in their
12 childhood, like Glassman, to associate medical attention with emotional support, leading them
13 to externalize their internal stress as otherwise-unexplained physical ailments.

14 In contrast, Levy noted that PTSD is a very rare disorder, and is found primarily in
15 people who have faced serious threats to their lives, such as war, plane crashes, or traumatic
16 sexual assault. Factors tending to support a diagnosis of PTSD include: 1) a perceived threat
17 to one's life or to another's life; 2) perceived helplessness in the face of that threat; 3) a sense
18 of personal paralysis and shortened sense of the future; and 4) severe withdrawal from
19 personal relationships. Levy opined that Glassman's situation did not rise to this level, noting
20 particularly that Glassman seemed extremely interactive in her personal relationships.

21 Levy also noted that the medical record supported a conclusion that Glassman was
22 abusing alcohol and narcotic drugs, and diagnosed her with possible alcohol abuse. Levy did
23 not conclude that Glassman was an alcoholic or addicted to narcotics, but merely found that
24 she was drinking inappropriately high amounts of alcohol and taking inappropriately large
25 doses of narcotics during the time period in question. He noted in particular that tests in 1999
26 showed that Glassman had elevated levels of GGT liver enzymes, which is an indication of
27 alcohol abuse, and also noted the repeated references in her medical file to her overuse of
28 Vicodin.

1 Consistently with all the other experts, Levy also diagnosed Glassman with anxiety
2 disorder. Levy agreed with Rosenberg that this anxiety disorder was long-standing and that it
3 predated the December 2000 accident.

4 Levy also agreed with Rosenberg that Glassman's personality seemed increasingly
5 organized around a self-perception of herself as a victim, and showed characteristics not only
6 of histrionic behavior (over-emotionality) but borderline personality disorder as well (emotional
7 volatility). Like Rosenberg, Levy opined that the December 2000 car accident, in which
8 Glassman had no culpability, had become a "convenient focus" on which to blame all her
9 subsequent difficulties. This, coupled with Glassman's tendency to exaggerate, explained her
10 current medical condition.

11 Levy thus concluded that Glassman's current psychological condition was neither
12 PTSD nor caused by the December 2000 accident, but rather, was an anxiety disorder and a
13 somatization disorder caused by a combination of her long-standing personality traits
14 combined with the stress in her personal life that she faced in the last four years coupled with
15 alcohol abuse. Levy also concluded that Glassman was very intelligent and was cognitively
16 and psychologically capable of resuming a career.

17 C. Conclusions Regarding the Medical Evidence

18 No treating physicians testified. Instead, each party called experts retained solely for
19 the purpose of examining and evaluating Glassman for this litigation. This is understandable
20 given that Glassman has not been diagnosed with and is not being treated for a physical
21 injury, nor is she being treated for any psychological condition. All experts agree that while
22 Glassman claims to continue to feel pain from the December 2000 accident, any physical
23 injuries she suffered from that accident would have resolved in no more than six months, and
24 that the only injury she continues to suffer from is emotional. The experts on each side have
25 reached, however, very different conclusions on the nature of the emotional injury, its cause,
26 and its likely duration.

27 With regard to the nature of the injury, Glassman's experts have diagnosed PTSD and
28 the government's experts have diagnosed anxiety and somatization disorders. Both sets of

1 experts necessarily disagree with the opposing experts' diagnoses. With regard to the cause,
2 Glassman's experts, as does Glassman, attribute the PTSD solely to the December 2000
3 accident. The government's experts, on the other hand, believe that Glassman's anxiety and
4 somatization disorders are rooted in her personality and medical history and that she has
5 simply focused on the December 2000 accident to the exclusion of the other stressors in her
6 life. With regard to duration, Glassman's experts believe that the PTSD disables her to the
7 extent that she will never be able to work again as a truck driver or in any other capacity. The
8 government's experts believe that Glassman is capable of resuming a career.

9 In order to find, as Glassman urges, that she is totally and permanently disabled from
10 working again, the court would have to first find that Glassman suffers from PTSD.
11 However, the court finds that the government's experts were, as a whole, more persuasive
12 than Glassman's, and finds that she does not suffer from PTSD and is not permanently
13 disabled from working.

14 This finding is based on a number of factors. First with regard to the experts, the
15 government's experts are better qualified. Both Drs. Rosenberg and Levy are trained in
16 forensic psychology and psychiatry, respectively, which according to them, involves the use of
17 psychiatry and psychology to determine the facts of a situation. Whereas, Drs. Miller and
18 Kastl, who do not specialize in forensics but rather act as treating physicians, accept at face
19 value the statements made by their patients and attempt to treat a particular problem or
20 alleviate pain.

21 Additionally, the government's experts administered tests that took into account the fact
22 that Glassman was involved in litigation at the time of her self-reported symptoms and
23 controlled for any bias that might have existed as a result. By contrast, Drs. Miller and Kastl's
24 reports rely almost entirely on symptoms self-reported by Glassman in forming their
25 conclusions. As a result, plaintiffs' experts came to a conclusion which is simply not credible--
26 that Glassman would have been so psychologically traumatized by the relatively minor
27 December 2000 accident that she would suffer PTSD so severe as to render her completely
28 unable to function in her life and unable to work in any capacity again. Indeed, this

1 unbelievable conclusion casts doubt on all the opinions rendered by the plaintiffs' experts.

2 The court thus finds that the defendants' experts provide a more objective and consequently,
3 persuasive diagnosis of Glassman's medical condition.

4 Similarly, with respect to Glassman's credibility, the court is disinclined to find that she
5 is as incapacitated as she claims. It is undisputed that Glassman has had a difficult life
6 peppered with a number of traumatic events, and that she has been under a high level of
7 stress for quite some time. In addition, the medical records reflect that Glassman has a
8 history of anxiety and unspecified physical complaints, consistent with the government's
9 experts' findings. It is also undisputed that Glassman has been in quite a few car accidents in
10 her life, probably far more than the average person might experience. In light of this history, it
11 is difficult to see how this one relatively minor accident in December 2000 would have the
12 catastrophic result that Glassman claims. Glassman never developed PTSD from other more
13 serious accidents or from the other traumatic events in her life, though it does appear likely her
14 high level of anxiety was a result of these various life experiences. Furthermore, Glassman's
15 personal history reflects that she is bright, capable, and quite resilient.

16 During the course of the trial, the court was able to observe Glassman and detect at
17 least some of the traits referred to by the government's experts, including extreme over-
18 emotionality and a persistent pattern of minimizing her own responsibility for setbacks in her
19 life and attempting to recast events in a light that would allow her to omit facts and details in
20 her life that she perceived as painful or embarrassing.

21 These factors, coupled with the basic implausibility of Glassman's claim of having
22 incurred PTSD from a relatively minor accident that is so severe that she can never work in
23 any capacity again – especially when compared with the significantly more major accident in
24 November 2002, from which Glassman claims she suffered no psychological damage at all –
25 persuades the court that the government's experts' conclusions are likely more accurate than
26 those of plaintiff's experts. Accordingly, the court finds that Glassman suffered no long-lasting
27 psychological trauma from the December 18, 2000 accident and that she does not currently
28 suffer from PTSD.

CONCLUSIONS OF LAW**A. Liability**

The government conceded that Sanchez, the postal worker driving the truck that struck Glassman on December 18, 2000, was acting within the scope of his employment and therefore the United States is liable, but only to the extent that a private actor would be liable under the laws of the state of California. 28 U.S.C. § 1346(b)(1). The government conceded liability as between it and Glassman but took the position that liability might be potentially shared between itself and the two drivers whom Glassman reported had stopped suddenly on the highway in front of her. However, because no evidence of the liability of those drivers was produced at trial, the court finds only that the government bears complete liability to Glassman for damages she sustained as a result of the December 18 accident. In the absence of evidence of the liability of others, the court rejects the government's request to find comparative fault.

B. Causation

Because the government has conceded liability, it is therefore liable to Glassman for damages, but only to the extent that Glassman's damages were caused by the December 18, 2000 accident, or from foreseeable consequences of it. See, e.g., Hardison v. Bushnell, 18 Cal.App.4th 22, 27 (1993) (any intervening events that the plaintiff cannot show were foreseeable from the original tort must be considered supervening, which excuses the defendant from all subsequent damages).

While Glassman claims now that the second accident did not result in any serious injury or trauma, she reported at the time that she was re-injured and that the accident had exacerbated the pain in her neck and lower back. Def. Exh. A-15 (4/17/01 ER report). See also Def. Exh. A-71 at 2 (Sutro expert report, Glassman reporting that April 2001 accident caused recurrence of injury). Thus, the April 17, 2001 accident is a supervening cause for Glassman's physical injuries, and Glassman cannot be awarded reimbursement for medical expenses or lost wages for any period beyond April 17, 2001.

C. Damages

Furthermore, damages may only be awarded based on losses that Glassman can prove were reasonably suffered because of the accident. See Piscitelli v. Friedenberg, 87 Cal.App. 4th 953, 989 (2001). The report and opinion of Glassman's expert economist Barry Ben-Zion were based on the assumptions that the December 2000 accident caused all of Glassman's damages and that she would never be able to work again. Because the court has now found contrary to those assumptions, his opinion must be and is rejected.

The government argues, through its expert Sally White, that Glassman's damages consist of lost wages, medical expenses, loss of household services, and general emotional distress damages. The court agrees that these damages are warranted, and examines each of them in turn.

1. Lost Wages

The evidence shows and the court finds that the physical injuries Glassman suffered in December 2000 rendered her unable to work for up to 4-6 months (the time estimated by Sutro for a full recovery from soft tissue injuries) and further, that she planned to stop working upon the birth of her fourth child. The court finds that Glassman has adequately established, by her testimony about how long she worked before the birth of her older child, that she would have worked until very near the birth of her fourth child, on April 26, 2001. While defendant argues that lost earnings should be calculated only to March 1, 2001, the date Glassman's expert relied on in his calculations and which was tied to his expectation of her maternity leave, the court finds more persuasive Glassman's testimony that she planned to work until her son was born, particularly in light of the fact that she was already having difficulty paying her bills and her husband had stopped driving for their company. However, because Glassman can only show direct causation from the December 18, 2000 accident until April 17, 2001, the date of the second accident, the court thus awards lost wages for this period.

White determined Glassman's projected average monthly income in 2000 in

determining her lost wages, and arrived at the figure of \$1696/month.⁶ The court awards lost wages damages for the time period of December 18, 2001 to April 17, 2001, or almost exactly four months. Thus, an award of \$1696 a month for four months totals **\$6784** in lost wages.

2. Medical Expenses

All parties agree that Glassman suffered soft tissue injuries as a result of the December 18, 2000 accident, which rendered her unable to work. However, as previously discussed, Glassman is entitled to damages for expenses incurred for treatment of injuries directly caused by the accident. Accordingly, she can only collect damages for her medical expenses incurred up to April 17, 2001.

Because many of the medical providers accepted reduced payment through MediCal, Glassman is only awarded the actual amount that was accepted as payment in full by the providers. Hanif v. Housing Authority, 200 Cal. App. 3d 635, 640 (1988). These payments are detailed in Pl. Exh. 113, and are as follows:

Date	Provider	Amount
12/18/00	Dominican Hospital	72.74 11.62
12/18/00	Radiology Medical Group	8.32
12/29/00 1/12/01 4/6/01	Santa Cruz Health Center	165.85 165.85 165.85
1/3- 2/8/01	Hinde Chiropractic	1505.00
1/12/01	Novacare	145.00
1/16/01 6/12/01 ⁷	Dr. Glenn Harper	99.45 29.32

⁶ The government's findings of fact state that White concluded that Glassman was earning \$1681 a month, but at trial, White testified that Glassman's monthly earnings were \$1696/month. This is confirmed in White's expert report, at Def. Exh. A-72. The court thus uses the \$1696 number.

⁷ The government concedes that Glassman is entitled to collect for the June 12, 2001 visit because Harper recommended a June follow-up visit on January 16, 2001.

5/21/01 ⁸	Paradigm Group	1400.00
12/28/00- 2/1/01 ⁹	Rite Aid Pharmacy	109.92

Totaling these numbers, the court finds that Glassman incurred medical expenses of **\$3878.92** from December 18, 2000 to April 17, 2001.

3. Loss of Household Services

Glassman also claims she was rendered completely unable to perform household services as a result of the December 2000 accident. The government is willing to concede this issue, and suggests that the court award Glassman \$1586/month for those services. Def. Exh. A-72. As previously discussed, Glassman can only show direct causation for her damages from December 2000 until April 2001, when the second accident occurred, and thus may only collect four months of damages.

Glassman testified generally that she was unable to perform household services as a result of the December 2000 accident, but did not provide any specific information about what household services she was unable to perform. However, Glassman could not have been completely unable to perform household services throughout this entire time period, because she was capable of driving and running errands at the time of her second accident in April 2001.

The court therefore that Glassman was approximately 75% incapacitated from performing household services over the four-month time period at issue here. Seventy-five percent of \$1586 is \$1189.50. The amount of \$1189.50 per month from December 18, 2000 to April 17, 2001 equals **\$4758.00**.

⁸ The government concedes that Glassman is entitled to collect for this May 21, 2001 visit, for her first post-accident MRI, because she had been unable to undergo an MRI at the time of the accident due to her pregnancy.

⁹ The government presumes that these prescriptions were used solely for accident-related purposes, even though Glassman was previously filling approximately the same number of prescriptions before the December 2000 accident.

1 4. General Damages

2 Glassman claims that she suffered general damages in the form of emotional distress
3 from the accident as well. The court finds that Glassman did indeed suffer emotional distress
4 as a result of the accident, especially given the fact that she was five months pregnant at the
5 time of the accident and had her one-year-old son in the car with her at the time. While
6 general damages are difficult to quantify, the court concludes that a reasonable estimate of
7 Glassman's general damages is **\$20,000**, more than four times the amount of her medicals
8 specials, and awards that amount.

9 5. Miscellaneous


10 The government has already settled a property damage claim with the insurer of
11 Glassman's van, however, Glassman is awarded **\$500** as reimbursement for the deductible
12 she paid.

13 **CONCLUSION**

14 The court thus awards Glassman total damages of **\$35,920.90**. Judgment in this
15 amount shall be entered in favor of plaintiff and against defendant. The clerk is ordered to
16 close the file.

17 **IT IS SO ORDERED.**

18 Dated: July 15, 2005

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21 PHYLLIS J. HAMILTON
22 United States District Judge
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